



## Expat Counsel

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## CRIMINAL LAW IN THAILAND

### Part LXX: Barely legal? The facts on nude sunbathing

We're lawyers and spend most of the day chained to our desks or in windowless conference rooms. But hey, this is Thailand. Once in a while even we go for a stroll on the beach.

Where the beach is crowded with foreigners, many of the ladies are sunbathing topless — some even bottomless.

What's the problem?

We agree that these days sunbathing the way you want on the beach is pretty low on the list of morally reprehensible offences. Be that as it may, Thailand's laws on nudity are consistent with Thai tradition — it's not allowed in public.

Section 388 of Thailand's Criminal Code treats "indecently exposing one's body" in public as a petty offence, exposing the perpetrator to a fine of not more than 500 baht.

What is meant by "indecently exposing one's body"? There is no hard and fast

explanation of this in the law or cases of the Supreme Court. Legal texts explain that this is legally determined on a case-by-case basis in accordance with Thai customs and local traditions.

For example, in accordance with Thai custom, a woman walking topless around town would be considered indecently exposing her body. On the other hand revealing a breast in public to nurse a baby would not be considered indecent.

Section 388 applies to nudity "in public". Let's look at a couple of examples.

Let's say you're on the beach at a resort in a remote location. Aside from the other guests, many of whom have already shed their bathing attire, there are only a few resort employees around.

Here's another example. What if you are staying at a private hotel or condominium that is walled off from the public. It has a common pool where you'd like to sunbathe topless.

In both of the above cases you might argue that local tradition allowed nudity. On the other hand, "in public" has been defined in legal texts as capable of being seen by other people, which you definitely would be in these cases.

The decision as to whether this would violate Section 388 would be made by a local official, and this person is not likely to be a nude sunbather.

Here's a final example. What if your own house is behind walls and there's a swimming pool there?

If it's just you there, no problem, because you're not "in public". However, if your housekeeper is there or the gardener, you're capable of being seen by others, and the case could go the other way.

You'll notice we said Section 388 was a petty crime. Why worry about it? You don't have to, but there are two things to think about.

First, if you do happen to be arrested for this, you'll end up being taken to the police station and having your afternoon ruined.

Also, you're in somebody else's country. Take a look at what most Thai people wear at the beach. Some wear swimming suits. Many if not most, however, swim fully clothed in shorts and tee shirts. As a matter of cultural sensitivity here, nudity doesn't go at the beach. ■

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